128 Pac. 727; *Galveston* v. *Contreras,* 31 Tex. Civ. App. 489, 72 S. W. 1051. After discussing *Nugent* v. *Brooklyn Heights R. Co.,* 154 App. Div. 667, 139 N. Y. Supp. 367, which the court regarded as being based upon the fact that no injuries to an infant *en ventre sa mere* due to the negligence of the carrier were recoverable since there was no contract of carriage and hence no duty on the part of the railroad to the infant, the court adopts the stand that the mere fact that there are no precedents for a negligence action of this character does not prevent the maintenance of one since the entire policy of the law is to protect and give such infants every right which is for their benefit. The fact that a criminal action has long been maintainable for injuries causing the death of a child while in the mother's womb seem to support an action of this sort. A strong dissent, however, presents a number of cases that make the decision of the majority at least questionable. *Nugent* v. *Brooklyn Heights Rd. Co., supra,* is discussed and considered as authority for the proposition that no such action may be maintained upon the basis that such an action is one in tort rather than upon the contract, as the majority opinion states. That such is the correct view seems to appear from the fact that the duty of ordinary care arises in the case even of a gratuitous passenger, and an infant *en ventre sa mere* certainly cannot be placed in the category of a trespasser. Similar cases in which the infant was not allowed to maintain a tort action for injuries to itself before birth are *Dietrich* v. *Northampton,* 138 Mass. 14, 75 Am. St. Rep. 176; *Allaire* v. *St. Luke's Hospital,* 184 Ill. 359, 56 N. E. 638; *Buel* v. *United Rys. Co.,* 248 Mo. 126, 154 S. W. 71, *Gorman* v. *Budlong,* 23 R. I. 169, 91 Am. St. Rep. 629. In view of such authorities to the contrary and with no cases to support the action of such child, there seems no basis for allowing a child to maintain a negligence action for injuries while *en ventre sa mere.* See 34 HARV. L. REV. 549.

INSURANCE—ACCIDENTAL DEATH—MILITARY SERVICE.—In an action by the beneficiary named in an insurance policy, which provided for double indemnity "in the event of death by accidental means (murder or suicide, sane or insane, not included)," it was *held,* that the death of the insured, caused by his being struck by a piece of shrapnel from an exploded shell while engaged in battle as a soldier, resulted through "accidental means" within the terms of the policy. *State Life Ins. Co.* v. *Allison,* (C. C. A., Fifth Circuit, 1920), 269 Fed. 93.

An injury is not produced by accidental means, within the terms of such a policy as is involved in the principal case, where it is the result of an act or acts in which the insured intentionally engages, and is caused by a voluntary, natural, ordinary movement, executed as was intended. *Stone* v. *Fidelity & Cas. Co. of N. Y.,* 133 Tenn. 672, 182 S. W. 252. But if any mischance supervenes even in such an intentional act, whereby an injury is caused, the injury is deemed accidental. *Preferred Acc. Ins. Co.* v. *Patterson,* 213 Fed. 595. In such a case the injury is accidental in the sense that the injury is an unforeseen and unexpected casualty. Accidental means are those which produce effects which are not their natural and probable consequences. 4 COOLEY,

BRIEFS ON INS., 3159. Natural consequences are such as ought to be expected. Probable consequences are those which are more likely to follow from the use of a given means than to fail to follow. Thus, reasons the court in the instant case, since chance determines what person or persons shall be killed in war, and since "of the millions who serve as soldiers, comparatively few are killed," the insured met death by accidental means, without his design, consent, or co-operation, as the result of a hazard incident to his occupation. As in another recent case, *Interstate Business Men's Acc. Ass'n. of Des Moines, Ia.* v. *Lester*, 257 Fed. 225, where the beneficiaries of a similar policy were allowed to recover for the death of an insured physician, who was shot and killed while performing his duty as an officer of the National Guard on emergency service during a strike, the court refused to write into the policy an exception to the effect that if the insured engaged in any military service the insurance should cease. Every person in the course of his life is necessarily exposed to varying degrees of hazard. Simply going into an environment where the hazard is greater than that experienced in one's daily employment cannot remove a chance death in such environment from the class of "deaths by accidental means," when the policy does not except such particular hazards. True, the decision seems to involve a liberal extension of the principles enunciated in former cases, yet considering the words of the policy and the hazard involved, it seems reasonable and justified.

LANDLORD AND TENANT—CONSTRUCTIVE EVICTION—NECESSITY FOR ABANDONMENT.—The defendant rented a theatre building from the plaintiff for three years. After a year's occupation the defendant vacated as a result of the plaintiff's notice to quit for failure to pay rent. In an action by the plaintiff to recover rent the defendant counter-claimed for damages, the basis for the counter-claim being an eviction caused by the landlord's using the basement of the building for the purpose of cutting and storing onions. *Held*, that the counter-claim could not be allowed, for the tenant continued to occupy the premises and pay rent after the obnoxious odors from the basement became apparent. *Toy* v. *Olinger*, (Wis., 1921), 181 N. W. 295.

A use of the adjoining premises by the landlord which materially interferes with the tenant's enjoyment of his own premises may result in a constructive eviction of the tenant. 2 TIFFANY, LANDLORD AND TENANT, 1279; *Grosvenor Hotel Company* v. *Hamilton*, [1894] 2 Q. B. 836. The test seems to be whether the use to which the adjoining premises are put would constitute a nuisance at common law. 2 TIFFANY, LANDLORD AND TENANT, 1281; *Sully* v. *Schmitt*, 147 N. Y. 248. Hence, if the landlord knowingly rents the adjoining premises to a person who operates a house of prostitution, the tenant may claim an eviction. *Dyett* v. *Pendleton*, 8 Cow. (N. Y.) 727. But to constitute an eviction the tenant must abandon the premises within a reasonable time after the acts complained of. *Commelin* v. *Theiss*, 31 Ala. 412; *Fox* v. *Murdock*, 58 Misc. (N. Y.), 207. The principal case did not decide whether the "odor with which nature has so bountifully endowed the onion," was a nuisance upon which an eviction might be predicated, but wisely eluded